



Agenda Date: 2/5/03
Agenda Item: 3H

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

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CABLE TELEVISION

IN THE MATTER OF THE ALLEGED FAILURE)	
OF RCN TELECOM SERVICES, INC. AND)	
HOME LINK COMMUNICATIONS OF)	
PRINCETON, L. P. TO COMPLY WITH)	
PROVISIONS OF THE NEW JERSEY CABLE)	<u>ORDER ACCEPTING</u>
TELEVISION ACT, <u>N.J.S.A. 48:5A-1 ET SEQ.</u> ,)	<u>OFFER OF SETTLEMENT</u>
AND/OR THE NEW JERSEY ADMINISTRATIVE)	
CODE, <u>N.J.A.C. 14:18-1.1 ET SEQ.</u>)	DOCKET NO. CS03010035

(SERVICE LIST ATTACHED)

BY THE BOARD¹:

RCN Telecom, Services Inc. and Home Link Communications of Princeton, L.P. are both franchised cable television operators, that provide cable television services to approximately 81,000 New Jersey subscribers in 31 municipalities throughout Hunterdon, Mercer, Morris and Somerset Counties, (jointly referred to herein as "RCN"). The Board's Office of Cable Television Inspection and Enforcement Bureau ("Office"), after conducting a routine compliance review and serving notice of its allegations on RCN has alleged that RCN was not conforming to certain provisions of the New Jersey State Cable Television Act, N.J.S.A. 48:5A-1 et seq. and the New Jersey Administrative Code, N.J.A.C. 14:18-1.1 et seq., as more specifically set forth herein below. The aforementioned statutes and regulations require all cable systems in New Jersey to provide certain notices, reports and information for the protection of the cable consumer.

As a result of correspondence, telephone conversations and settlement conferences between RCN and the Office, RCN, on January 29, 2003, submitted an Offer of Settlement concerning the following alleged non-conforming practices:

1. that RCN failed to provide annual notification of all monthly service packages and corresponding rates available to residential subscribers, as required by N.J.A.C. 14:18-3.18(a)1, for all of the years of 1997, 1998, 1999, 2000, 2001 and 2002;
2. that RCN failed to provide annual notification of all monthly service packages and corresponding rates available to non-residential subscribers, as required by N.J.A.C. 14:18-3.18(a)1, for all of the years of 1997, 1998, 1999, 2000, 2001 and 2002;

¹ Commissioner Carol J. Murphy did not participate in the deliberation or the vote on this matter.

3. that RCN failed to provide its subscribers with annual privacy notification, as required by 47 U.S.C. § 551(a)1, N.J.S.A. 48:5A-56(b) and N.J.A.C. 14:18-3.18(a)2 for the years of 1998, 2000, and 2002;
4. that RCN failed to provide its subscribers with annual notification of senior citizens/disabled discounts in systems where offered, as required by N.J.A.C. 14:18-3.18(a)4 and N.J.A.C. 14:18-3.20 for the years of 1997, 1998, 2000 and 2002;
5. that RCN failed to provide its subscribers with annual notification of the availability of hearing impaired devices, as required by N.J.A.C. 14:18-3.14(a)2 and N.J.A.C. 14:18-3.18(a)5 for the years of 1997, 1998, 2000 and 2002;
6. that RCN failed to provide its subscribers with annual notification of the availability of parental lock devices, as required by 47 U.S.C. § 544(d)2, N.J.A.C. 14:18-3.14(a)1 and N.J.A.C. 14:18-3.18(a)6 for the years of 1998, 2000 and 2002;
7. that RCN failed to provide its subscribers with quarterly notification of the availability of outage credits as outlined in N.J.A.C. 14:18-3.5, and required by N.J.A.C. 14:18-3.18(b) for two quarters in 1997, two quarters in 1998, two quarters in 1999, all quarters in 2000, three quarters in 2001 and three quarters in 2002;
8. that RCN failed to provide its subscribers with quarterly notification of the complaint officer and the Office's toll free number, as required by N.J.S.A. 48:5A-26(c) and N.J.A.C. 14:18-3.18(b)2, for all quarters in 1997, all quarters in 1998, all quarters in 1999, all quarters in 2000, all quarters in 2001 and three quarters in 2002;
9. that RCN failed to identify on their monthly billing statements each service for which a separate charge is imposed and the rate for each service, as required by N.J.A.C. 14:18-3.7(a)2 for all of the years of 1997, 1998, 1999, 2000, 2001 and 2002;
10. that RCN failed to show any other separate fees on all bills, as required by N.J.A.C. 14:18-3.7(a)8 for all of the years of 1997, 1998, 1999, 2000, 2001 and 2002;
11. that RCN failed to show the amount of accumulated late charges on all bills, as required by N.J.A.C. 14:18-3.7(a)11 for all of the years of 1997, 1998, 1999, 2000, 2001 and 2002;
12. that RCN failed to provide subscribers fifteen (15) days' written notice prior to disconnection for non-payment, as required by N.J.A.C. 14:18-3.9(b) for 2002;
13. that RCN failed to comply with reimbursement for lost, stolen or damaged equipment by levying a charge for some replacement equipment that exceeded their actual or replacement cost, as required by N.J.A.C. 14:18-3.23 for all of the years of 1997, 1998, 1999, 2000, 2001 and 2002;
14. that RCN failed to provide appropriate records (work orders), as required by N.J.A.C. 14:18-6.5 from June 2000 to August 2001;
15. that RCN failed to conform to the State of New Jersey Unclaimed Property Law whereby it is the duty of the holder to report property presumed abandoned, as required by

N.J.S.A. 46:30B-46 for some or all of the years of 1998, 1999, 2000, 2001 and 2002;

16. that RCN failed to file financial statements of its parent company, as required by N.J.A.C. 14:18-7.1(b) or filed statements beyond the time provided by law for all of the years of 1997, 1998, 1999, 2000 and 2001;
17. that RCN failed to comply with the method of billing by not issuing bills to customers with credit balances, as required by N.J.A.C. 14:18-3.7(a)6 and N.J.A.C. 14:18-3.8 for some or all of the years of 2000 and 2001
18. that RCN failed to maintain receipts and records concerning deposits, as required by N.J.A.C. 14:18-4.6, N.J.A.C. 14:18-4.7, N.J.A.C. 14:18-4.8 and N.J.A.C. 14:18-4.9 for all of the years of 1997, 1998, 1999, 2000, 2001, and 2002;
19. that RCN failed to provide new subscribers with adequate information, such a complete copy of the company's tariff, as required by N.J.A.C. 14:18-3.3(d) for all of the years of 1997, 1998, 1999, 2000, 2001 and 2002;
20. that RCN failed to file annual Telephone System Information reports with the Office as required by N.J.A.C. 14:18-7.6, or filed same well beyond the required time for some or all of the years 1995, 1996, 1997, 1998, 1999, 2000, and 2001;
21. that RCN failed to file periodic Telephone System Performance reports with the Office as required by N.J.A.C. 14:18-7.7, or filed same well beyond the required time for some or all of the years 1996, 1997, 1998, 1999 and 2000; and
22. that RCN failed to fully comply with the terms of a prior Offer of Settlement, Docket Number CC98070467, that required implementation of specific remedial action relating to billing detail, customer rights notifications and work orders.

RCN submitted a monetary Offer of Settlement in the amount \$100,000.00 in order to resolve all issues concerning the violations alleged by the Office. The Offer represents a reasonable settlement in view of the alleged violations and the operator's past compliance history. In addition to the monetary settlement, RCN has agreed to escrow an additional \$1,000,000.00 to cover its potential refund liability stemming from possible refunds to subscribers or municipalities as determined by the Board, to satisfy any franchise fee underpayments, violations of the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq., any regulation promulgated thereunder, any further violations of the Act or Regulations identified beyond the third quarter of 2002 which have not been identified above, any violations of federal customer service regulations beginning with the third quarter 2002 or any Orders of the Board, which claims may arise from the third quarter of 2002.

As part of the Offer of Settlement, RCN represented that it has taken the following remedial action:

1. RCN has corrected internal procedures to ensure proper notices are sent to subscribers.
2. RCN has corrected internal procedures to ensure compliance with applicable regulations concerning billing information conveyed to subscribers.
3. RCN has taken steps to ensure telephone system information and other reports, which are required to be filed with the Board, are done so in a timely manner.

The Office recommends acceptance of this Offer of Settlement based upon the aforementioned commitments and compliance with the New Jersey Cable Television Act and the New Jersey Administrative Code. The Office will monitor RCN's and any future successor's compliance herein after with notice requirements, billing practices and procedures and record keeping as set forth in the New Jersey Administrative Code.

The Board has reviewed the matter and recommendation of the Office, and HEREBY FINDS the Offer of Settlement to be reasonable. Therefore, the Board HEREBY ACCEPTS the Offer of Settlement proffered by RCN subject to the following provisions, conditions and/or limitations:

1. RCN shall tender \$100,000.00 to the Department of Education, State of New Jersey, payable July 10, 2003 to support educational programs, consistent with appropriate language in the New Jersey state budget permitting both the receipt and expenditures of these funds .
2. Within fifteen (15) days of issuance of the within Order Accepting the Offer of Settlement, RCN shall provide the Director of the Office of Cable Television with proof of a deposit of \$1,000,000.00 in escrow in a third party trust account, which it shall identify and which must be interest bearing. This amount of \$1,000,000.00 plus interest which accrues thereon may be used as the Board, upon notice to RCN and an opportunity to be heard, determines to be appropriate for the purpose of providing refunds to subscribers and/or municipalities; satisfying any franchise fee underpayments; paying any penalties for violations of the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq. and/or regulations promulgated thereunder, which violations are not listed on Exhibit "A" to the Offer of Settlement attached to the within Board Order, including, but not limited to, any violations during or after the third quarter of 2002 of the federal customer service regulations; paying any penalties for violations after the third quarter of 2002 of the New Jersey Cable Television Act, N.J.S.A. 48:5A-1 et seq., and/or regulations promulgated thereunder, which violations are the type listed on Exhibit "A" but for time periods not listed on Exhibit "A" for the particular type of violation; and paying any penalties for violations of Board Orders, which Orders have been or are issued during the time period after the third quarter of 2002 until such time as the Company transfers its assets, partnership interests and Certificates of Approval to Patriot. RCN's placement of \$1,000,000.00 in escrow shall not limit the Board's authority to order payment of such additional amounts as may hereafter be ordered, upon notice to RCN and an opportunity to be heard, for the purpose of providing for refunds to subscribers and/or municipalities, satisfying any franchise fee underpayments, payment of penalties for violations which may be alleged consistent with the terms of this Order, and such other payments as may be determined to be appropriate.
3. RCN shall provide verified proof to the Office of the annual and quarterly customer notices in the form of a true copy of the notices sent to each system and proof of mailing within thirty (30) days of the completion of such notices, but in no event later than April 30, 2003.

4. RCN shall make modifications to the bill format and disconnection notice within sixty (60) days of Board's acceptance of the Offer of Settlement, and shall provide verified proof to the Office no later than April 30, 2003.
5. The Board's acceptance of the Offer of Settlement is for the purposes of this proceeding only, addresses only those specific allegations, timeframes and the prior Docket addressed in the Offer of Settlement and shall not be construed as limiting the Board's authority in any other matter affecting RCN, or extending the scope of the items, issues or the prior Docket resolved thereunder.
6. For the purposes of assessing penalties for future offenses by RCN , its assigns or successors that may now or in the future operate the cable television systems that is the subject of the Offer of Settlement, such future offenses shall be considered subsequent offenses, in accordance with N.J.S.A. 48:5A-51b.

DATED: February 13, 2003

BOARD OF PUBLIC UTILITIES
BY:

(signed)

JEANNE M. FOX
PRESIDENT

(signed)

FREDERICK F. BUTLER
COMMISSIONER

(signed)

JACK ALTER
COMMISSIONER

DISSENTING OPINION OF COMMISSIONER CONNIE O. HUGHES AS TO THE FUNDING PROVIDED TO THE DEPARTMENT OF EDUCATION.

I respectfully dissent from the majority ruling regarding the RCN payment of \$100,000.00 to the Department of Education, State of New Jersey, payable July 10, 2003 to support educational programs, consistent with appropriate language in the New Jersey state budget permitting both the receipt and expenditures of these funds.

As discussed at the Board meeting, it is my belief that if utility or cable television company funds are being allocated to any Executive Branch department, the programming and use of those funds should be dedicated to address utility or cable television company related educational programs only.

For the aforementioned reason, I cannot support the RCN payment being made to the Department of Education being distributed. With this exception noted, I support the remainder of the Board's ruling.

(signed)

CONNIE O. HUGHES
COMMISSIONER

ATTEST:

(signed)

KRISTI IZZO
SECRETARY

**IN THE MATTER OF THE ALLEGED FAILURE OF RCN TELECOM SERVICES, INC.
AND HOME LINK COMMUNICATIONS OF PRINCETON, L. P. TO COMPLY WITH
PROVISIONS OF THE NEW JERSEY CABLE TELEVISION ACT, N.J.S.A. 48:5A-1 ET SEQ.,
AND/OR THE NEW JERSEY ADMINISTRATIVE CODE, N.J.A.C. 14:18-1.1 ET SEQ.**

OFFER OF SETTLEMENT

DOCKET NO. CS03010035

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